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10/562,029	01/25/2006	Norman Regenscheit	ZAHFRI P809US	5410
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DAVIS BUJOLD & Daniels, P.L.C. 112 PLEASANT STREET CONCORD, NH 03301			LEWIS, TISHA D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/562,029	<b>Applicant(s)</b> REGENSCHEIT, NORMAN
	<b>Examiner</b> TISHA D. LEWIS	<b>Art Unit</b> 3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 7-12 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 7-12 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08e)  
 Paper No(s)/Mail Date 5/10/2006 and 1/25/2006.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

The following is a first action on the merits of application serial no. 10/562,029 filed on January 25, 2006.

#### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Information Disclosure Statement***

The information disclosure statement filed on May 10, 2006 and January 25, 2006 has been considered.

#### ***Claim Objections***

Claim 7 is objected to because of the following informalities:

-In line 9, a space should be provided between "the" and "drive". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

-As to claim 1, lines 1-2, any limitation preceded by "in particular" is not a definite claim.

-As to claim 1, lines 6-7, applicant claims that the output shaft is also used as "another jack shaft" and then on line 11, applicant claims that shafts 4 and 6 is also corresponding "jack shafts". Although part labels in parenthesis are not positive limitations, it is unclear if applicant has claimed the use of the output shaft as a jack shaft twice or if the jack shafts are different shafts.

-As to claim 1, lines 15-16, the limitation of "the force distribution of the upstream wheel" lacks antecedent basis.

-please note that the claim limitations wherein the shafts "can be rotated" is being interpreted as a "possible design choice while keeping the functionality of the claimed transmission" as opposed to a transmission wherein the shafts can be moved after assembly.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Huber 20030015050. As to claim 7, Huber discloses a multi geared high low clutch for construction machines, in particular for excavator loaders and telescopic handlers, with a torque converter (2), a drive shaft (3), an output shaft (23) and several jack shafts (Figure 2), with distributed idlers on the several jack shafts (i.e., 11, 15, 18, 21), fixed wheels and shift clutches which form several reduction gear units for a gearshift and

direction circuit, containing four forward gears (K1 to K4) and two reverse gears (KV, KR or K4), the output shaft is also used as another jack shaft for a gear (Figure 1), wheels of a further forward gear unit corresponding with a first jack shaft (9) and the wheels of a further forward gear unit corresponding with a second jack shaft (6) engage with the wheels of the drive shaft, both of the first and second jack shafts can be rotated in every desired angle position around the drive shaft, further corresponding jack shafts (7/23) of the gears, applied to the drive shaft, are arranged one behind another on a side of the drive shaft and that the corresponding jack shafts of the gears can currently be rotated around a next visibly arranged jack shaft in a large angle area in a direction of the drive shaft (Figure 1), the further corresponding jack shafts can be rotated around a shaft of the force distribution of the upstream wheel. As to claim 10, Huber discloses the clutch, wherein by adding one or more wheels, a wide spectrum of transmission ratios and spreads results (true of all transmissions of this type).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huber in view of Lamela 6,513,399. As to claim 8, Huber discloses the clutch, but lacks the teaching of an insertable front wheel drive connected to a fixed wheel of the output shaft.

Lamela discloses a multi-gearred high low clutch for construction machinery, wherein an insertable front wheel drive (17) is connectable to a fixed wheel (660 of an output shaft (18) by an idler (27) and can be arranged in a large angle area around the output shaft.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Huber to employ a front wheel drive connection in view of Lamela in order to provide power to both front and rear wheels thereby providing more traction.

As to claim 12, Huber discloses the clutch, but lacks the teaching of an insertable front wheel drive connected with a fixed wheel by an idler on a front wheel drive jack shaft.

Lamela discloses the front wheel drive connected via the wheel and idler on a jack shaft (20).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Huber to employ a front wheel drive connection in view of Lamela in order to provide power to both front and rear wheels thereby providing more traction.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huber in view of McAskill 5,063,793. Huber discloses the clutch, but lacks a teaching of providing both front and rear wheel drive on the output shaft.

McAskill discloses a multi-gearred high low clutch for construction machinery, wherein a permanent front wheel drive (24) and rear wheel drive (20) occurs by an output shaft (S7) (Figure 4).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Huber to employ both a front and rear wheel drive on the output shaft in view of McAskill in order to provide power to both front and rear wheels thereby providing more traction.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huber in view of admitted prior art in specification page 4, paragraph [019]. Huber discloses the clutch, but does not disclose adding an entire shaft to achieve a six forward, three reverse gear transmission.

The admitted prior art discloses that six gear transmissions are well known in the art which would suggest that the transmission of Huber could have been a six gear transmission modified to a four gear transmission.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the transmission of Huber into a six gear transmission in view of the admitted prior art since six gear transmissions are already conceived (laid out) for construction machinery and modified into 4 or 5 gear transmissions.

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 7-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7-12 of copending Application No. 10/561,693. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application claims encompass the limitations of the copending application claims including distributed idlers on several jack shafts which correspond to the idlers distributed on the drive and output shafts of the copending application since applicant discloses that output shaft is a jack shaft itself.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Herlitzek 4,245,519, Leber et al 5,743,142 and WO 9415116.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 571-272-7093. The examiner can normally be reached on M-F 9AM TO 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHARLES A. MARMOR can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tdl  
March 16, 2008  
/TISHA D. LEWIS/  
Primary Examiner, Art Unit 3681

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